

## **REMARKS/ARGUMENTS**

Receipt of the Office Action dated March 3, 2004 is hereby acknowledged. In that action the Examiner: 1) rejected claims 4, 20-25, 34-42, 65 and 68-73 as allegedly indefinite; 2) rejected claims 20, 23, 25, 68, 71 and 73 as allegedly anticipated by *Broyles* (U.S. Patent No. 5,879,834, hereinafter *Broyles* '734); 3) rejected claims 1, 6, 20-23, 25, 34, 38-40, 42, 62, 68-71 and 73 as allegedly anticipated by *Broyles* (U.S. Patent No. 6,135,020, hereinafter *Broyles* '020); 4) rejected claims 2-4, 35-37 and 63-65 as allegedly obvious over *Broyles* '020 taken with *Croft* (U.S. Patent No. 3,789,592); 5) rejected claims 5, 66-67 as allegedly obvious over *Broyles* '020 in view of *Ramacher* (U.S. Patent No. 3,962,072); and 6) objected to claims 24, 41 and 72 as being dependent upon a rejected base claim but otherwise allowable.

With this response, Applicants amend claims 1, 4, 20, 24, 34, 41, 62, 65, 68 and 72, and cancel claims 7-19, 26-33 and 43 61. Reconsideration is respectfully requested.

### **I. AMENDMENTS TO THE SPECIFICATION**

With this response, Applicants present a plurality of amendments to the specification. The amendments to paragraphs [0011], [0031] and [0043] are to correct grammatical deficiencies. The amendment to paragraph [0046] is to make consistent the use of the reference numbers with the figures. No new matter is presented in these amendments.

### **II. EFFECTIVELY ALLOWED CLAIMS**

In the Office Action dated March 3, 2004, the Examiner objected to claims 24, 41 and 72 as being dependent upon a rejected base claim, but otherwise allowable. With this response, Applicants amend claims 24, 41 and 72 to be in independent form, including the limitations of

their respective base claims and any intervening claims. By virtue of their dependencies, these claims already contained these limitations.

Thus, claims 24, 41 and 72 should be in condition for allowance.

### III. CLAIM REJECTIONS OVER THE RELATED ART

#### A. Claim 1

Claim 1 stands rejected as allegedly obvious over *Broyles* '020. Applicants amend claim 1 to more clearly define over the *Broyles* '020 reference.

The *Broyles* '020 reference does not expressly discuss handling of secondary cracker product. Even if it is assumed that the secondary cracker product in the *Broyles* '020 device is applied to the width separation device, the aspirator noted in the *Broyles* '020 patent at Col. 11, ll. 43-53 is taught to be "over the exit portion of each of the four pans ...", thus any separation performed by the aspirator is **after width separation**. (See *Broyles* Figure 8, (in particular pans 116, 118, 120 and 122)).

By contrast, claim 1 specifically recites, "separating the secondary cracker product by weight into a lighter portion and a heavier portion; **and then** applying the heavier portion to the width separation device."

Based on the foregoing, Applicants respectfully submit that claim 1, and all claims which depend from claim 1 (claims 2-6), should be allowed.

#### B. Claim 20

Claim 20 stands rejected as allegedly obvious over *Broyles* '020. Claim 20 also stands rejected as allegedly obvious over *Broyles* '734.

Neither *Broyles* '734 nor *Broyles* '020 teach or render obvious the limitations of claim 20. With regard to slot 30 relied upon by the Examiner, the *Broyles* '734 patent states:

If the pecan parts have a thickness greater than slot 30, gravity forces the pecan parts off the product end 34 of the rotating cylinders 32. Pecan parts that fall off the product end of the rotating cylinders 32 represent whole uncracked pecans and substantially whole cracked pecans that were not further cracked by the rubber coated cylinders 28. **Everything that falls off the product end of the rotating cylinders 32 is returned to the cracker to be re-cracked.**

(*Broyles* '734, Col. 4, l. 63 through Col. 5, l. 4 (emphasis added)). Thus, *Broyles* '734 teaches both whole uncracked pecans and substantially whole cracked pecans returned to the cracker. *Broyles* '020 is likewise deficient.

Claim 20, by contrast, specifically recites, "sorting uncracked pecans from substantially whole cracked of the largest width graduations; and returning the uncracked pecans to the cracker." Neither the *Broyles* '734 nor the *Broyles* '020 teach or fairly suggest this sorting of the uncracked pecans from the substantially whole cracked pecans.

Based on the foregoing, Applicants respectfully submit that claim 20, and all claims which depend from claim 20 (claims 21-23 and 26), should be allowed.

#### C. Claim 34

Claim 34 stands rejected as anticipated by *Broyles* '020. Claim 34 also stands rejected as allegedly obvious over *Broyles* '020 in view of *Croft*.

*Broyles* '020 states:

Pecan parts that fall off the product end 30 of the rotating cylinders 32 represent whole uncracked pecans and substantially whole cracked pecans that were not further cracked by the rubber coated cylinders 28. **Everything that falls off the product end of the rotating cylinders 32 is returned to the cracker to be re-cracked.**

(*Broyles* '020, Col. 6, ll. 9-15 (emphasis added)). Thus, *Broyles* '020 expressly teaches that both the whole uncracked pecans and substantially whole cracked pecans are returned to the cracker.

Claim 34, by contrast, specifically, "sorting uncracked pecans from substantially whole cracked pecans of a largest width graduation; and returning the uncracked pecans to the cracker." Applicants respectfully submit that *Broyles* '020 does not teach or fairly suggest this limitation of claim 34. Applicants further submit that because of this deficiency of *Broyles* '020, the combination of *Broyles* '020 and *Croft* likewise cannot teach or fairly suggest these limitations.

Based on the foregoing, Applicants respectfully submit that claim 34, and all claims which depend from claim 34 (claims 35-40 and 42), should be allowed.

**D. Claim 62**

Claim 62 stands rejected as allegedly anticipated by *Broyles* '020. Claim 62 also stands rejected as allegedly obvious over *Broyles* '020 in view of *Croft*. Applicants amend claim 62 to more clearly define over the teaching of *Broyles* '020.

The *Broyles* '020 reference does not expressly discuss handling of secondary cracker product. Even if it is assumed that the secondary cracker product in the *Broyles* '020 device is applied to the width separation device, the aspirator noted in the *Broyles* '020 patent at Col. 11, ll. 43-53 is taught to be "over the exit portion of each of the four pans ...", thus any separation performed by the aspirator is after width separation. (See *Broyles* Figure 8, (in particular pans 116, 118, 120 and 122)). *Croft* does not fill these deficiencies.

By contrast, claim 62 specifically recites, "separating the secondary cracker product by weight into a lighter portion, and a heavier portion; and then applying the heavier portion to the

width separation device.” Neither *Broyles* standing alone, nor the combination of *Broyles* with *Croft*, teach or fairly suggest the limitations of claim 62.

Based on the foregoing, Applicants respectfully submit that claim 62, and all claims which depend from claim 62 (claims 63-67), should be allowed.

**E. Claim 68**

Claim 68 stands rejected as allegedly anticipated by *Broyles* ‘734. Claim 68 also stands rejected as allegedly anticipated by *Broyles* ‘020.

Neither the *Broyles* ‘734 nor *Broyles* ‘020 teach or render obvious the limitations of claim 20. With regard to slot 30 relied upon by the Examiner, the *Broyles* ‘734 patent states:

If the pecan parts have a thickness greater than slot 30, gravity forces the pecan parts off the product end 34 of the rotating cylinders 32. Pecan parts that fall off the product end of the rotating cylinders 32 represent whole uncracked pecans and substantially whole cracked pecans that were not further cracked by the rubber coated cylinders 28. **Everything that falls off the product end of the rotating cylinders 32 is returned to the cracker to be recracked.**

(*Broyles* ‘734, Col. 4, l. 63 through Col. 5, l. 4 (emphasis added)). Thus, *Broyles* ‘734 teaches both whole uncracked pecans and substantially whole cracked pecans returned to the cracker. *Broyles* ‘020 is likewise deficient.

Claim 20, by contrast, specifically recites, “sorting uncracked pecans from substantially whole cracked of the largest width graduations; and returning the uncracked pecans to the cracker.” Neither the *Broyles* ‘734 nor the *Broyles* ‘020 teach this sorting of the uncracked pecans from the substantially whole cracked pecans.

By contrast, claim 68 specifically recites, “sorting uncracked nuts from substantially whole cracked nuts of a largest width graduation; and returning substantially only the uncracked

nuts to the cracker.” Neither the *Broyles* ‘734 nor the *Broyles* ‘020 teach or fairly suggest these limitations.

Based on the foregoing, Applicants respectfully submit that claim 68, and all claims which depend from claim 68 (claims 69-71 and 73), should be allowed.

#### **IV. CLAIM CANCELLATIONS**

With this response, Applicants cancel claims 7-17, 26-33 and 43-61. These claims have been previously withdrawn from the case because of the restriction requirement, and the cancellation of these claims is without prejudice to later asserting these claims, such as in a divisional or continuation application.

#### **V. CONCLUSION**

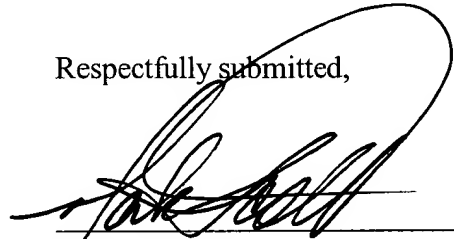
Applicants respectfully request reconsideration and allowance of the pending claims. If the Examiner feels that a telephone conference would expedite the resolution of this case, he is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

App. No. 09/965,276  
Amdt. Dated June 14, 2004  
Reply to Office Action of March 3, 2004

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark E. Scott', is written over a horizontal line.

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